

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Friday, October 30, 2015 – 9:00 a.m. – Room 445 State Capitol

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. Curtis Oda, House Chair
Sen. J. Stuart Adams
Sen. Jim Dabakis
Sen. Gene Davis
Sen. Mark B. Madsen
Rep. Carol Spackman Moss
Rep. R. Curt Webb

Rep. Mark A. Wheatley

Members Absent:

Rep. LaVar Christensen

Staff Present:

Mr. Arthur L. Hunsaker, Policy Analyst
Ms. Christine R. Gilbert, Associate General Counsel
Ms. Tracey Fredman, Legislative Assistant

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Stephenson called the meeting to order at 9:15 a.m. Rep. Christensen was excused from the meeting.

MOTION: Sen. Dabakis moved to approve the minutes of the September 29, 2015, meeting. The motion passed unanimously. Sen. Adams, Sen. Madsen, and Rep. Wheatley were absent for the vote.

2. Draft Bill, "State Liability Protection for School Employees"

Committee staff distributed draft legislation "State Liability Protection for School Employees" (2016FL-0590/008).

Mr. Scott Jones, Associate Superintendent of Public Instruction, expressed support for the draft legislation, which modifies certain deadlines related to public school employee participation in the Risk Management Fund.

Ms. Tani Downing, Director, Division of Risk Management, explained the current process for how school employees are informed of insurance coverage provided by the state each year and indicated that teachers at state funded chartered schools may be covered by the Risk Management Fund, and responded to committee members' questions.

Mr. Jim Behunin, Audit Supervisor, Office of the Legislative Auditor, clarified that the purpose of the legislation was to provide policy information to faculty and staff prior to the start of each academic year.

MOTION: Rep. Webb moved that the committee recommend draft legislation "State Liability Protection for School Employees." The motion passed unanimously. Sen. Madsen and Sen. Adams were absent for the vote.

3. R307-230 NOx Emission Limits for Natural Gas-Fired Water Heaters

Mr. Taz Biesinger, Utah Home Builders Association, distributed "R307-230 NOx Emission Limits for Natural Gas-Fired Water Heaters" and explained the association's view that the Air Quality Board does not have the authority to make changes to the Utah Building Code, such as those proposed in R307-230.

Mr. Chris Kyler, Utah Realtors Association, expressed concern for the affordability to new homeowners of the proposed water heaters and their compatibility with other household appliances. Mr. Kyler concurred with Mr. Biesinger and stated that because it does not appear that the Air Quality Board followed the process outlined in Section 15A-1-204, the rule violates state statute. He asked if the committee finds the board is exempt from the requirements of Section 15A-1-204, that the committee consider legislation that would not allow mandates, like those in R307-230, to go into effect prior to consideration by the Legislature.

Mr. Bryce Bird, Director, Division of Air Quality, Department of Environmental Quality, said the issue being discussed was not brought up at any time during the rulemaking process. He clarified that the rule does not impact the Building Code but only affects emission limits by requiring a certification label on a water heater, which is within the clear authority of the Air Quality Board.

Ms. Gilbert provided committee members with an analytical framework to assist in the discussion of whether the rule is in conflict with statute. She first referenced "Section 19-2-204, Powers of Board," which was distributed in the mailing packet. Ms. Gilbert noted that Subsection 19-2-204(1)(a) states that the board may make rules "regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air pollutants that may be emitted by an air pollutant source." She indicated it is often generally accepted that a more stringent standard is acceptable in rule because if something is more stringent than a lesser standard, an entity would be complying with the minimum standard set by code and the more stringent standard set by administrative rule. She also noted that the language cited in Utah Code Sections 15A-1-204 (1) and (2) by Mr. Biesinger is not entirely clear in this context.

Committee discussion followed about whether the rule is in compliance with statute or should be sunsetted.

MOTION: Sen. Adams moved that the committee recommend placing R307-230, NOx Emission Limits for Natural Gas-Fired Water Heaters, on the list of state agency administrative rules that the committee recommends not be reauthorized by the Legislature in the 2016 General Session, and then the Legislature may address the conflict between Section 19-2-204, Powers of Board, and Section 15A-1-204, Amendments and Additions to IFC Related to Fire Protection Systems.

Committee discussion continued and Mr. Bird responded to committee members' questions about the implementation date of the rule, which he indicated is November 1, 2017.

SUBSTITUTE MOTION: Sen. Davis moved that committee discussion be moved to the next agenda item. The motion failed with Sen. Dabakis, Sen. Davis, Rep. Moss, and Rep. Wheatley voting in favor.

Chair Stephenson called for a vote on Sen. Adams' original motion to recommend placing the rule on the sunset list. The motion passed with Sen. Dabakis, Sen. Davis, Rep. Moss, and Rep. Wheatley voting in opposition.

MOTION: Sen. Davis moved that the committee send a letter to the Business and Labor Interim Committee and the Natural Resources, Agriculture, and Environment Interim Committee to inform them of the discussion that has taken place. The motion passed unanimously.

4. R384-415 Electronic Cigarette Substance Standards

Mr. Aaron Frazier, Executive Director, Utah Smoke Free Association, noted that the association, which is regulated under 2015 General Session H.B. 415, "Regulation of Electronic Cigarettes," believes that R384-415, Electronic Cigarette Substance Standards, would place stricter regulations on the vapor industry than those of the tobacco industry. He stated that the vapor industry had no representation through the rulemaking process and that the rule requires business owners who sell vapor products to implement a costly record keeping and testing program, which will make it difficult for small businesses to comply.

Dr. Robert Rolfs, Deputy Director, Department of Health, reported that 2015 General Session H.B. 415 directed the department to develop a rule establishing standards for labeling, nicotine content, packaging, and product quality. He highlighted the process followed in the development of the rule and noted that the rule is in the public comment phase until November 16, 2015. Dr. Rolfs also recognized that the rule will be imposed on an industry that has been largely unregulated and that estimates of costs for compliance and enforcement are uncertain. Therefore, he concluded, comments are welcome and will be carefully considered before the rule is finalized.

Ms. Janae Duncan, Manager, Tobacco Prevention and Control Program, Department of Health, responded to committee members' questions about the advisory committee that prepared the rule.

Committee discussion followed and Mr. Frazier, Dr. Rolfs, and Ms. Duncan responded to questions about whether the rule goes beyond statutory language.

Sen. Madsen asked that this discussion be placed on a future agenda for discussion before the January 1, 2016, effective date of the rule.

5. Committee Business

Future meetings were scheduled for Monday, November 16, 2015, Monday, December 7, 2015, and Monday, December 21, 2015.

6. Adjourn

MOTION: Rep. Webb moved to adjourn the meeting. The motion passed unanimously.

Chair Stephenson adjourned the meeting at 11:30 a.m.